the problem he noted: ''Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree which could be avoided.'' 1 Richardson 377.

Military conflicts in the Mediterranean continued after Jefferson left office. The Dey of Algiers made war against U.S. citizens trading in that region and kept some in captivity. With the conclusion of the War of 1812 with England, President Madison recommended to Congress in 1815 that it declare war on Algiers: ''I recommend to Congress the expediency of an act declaring the existence of a state of war between the United States and the Dey and Regency of Algiers, and of such provisions as may be requisite for a vigorous prosecution of it to a successful issue.'' 2 Richardson 539. Instead of a declaration of war, Congress passed legislation ''for the protection of the commerce of the United States against the Algerine cruisers.'' The first line of the statute read: ''Whereas the Dey of Algiers, on the coast of Barbary, has commenced a predatory warfare against the United States. . . .'' Congress gave Madison authority to use armed vessels for the purpose of protecting the commerce of U.S. seamen on the Atlantic, the Mediterranean, and adjoining seas. U.S. vessels (both governmental and private) could ''subdue, seize, and make prize of all vessels, goods and effects of or belonging to the Dey of Algiers.'' 3 Stat. 230 (1815).

An American flotilla set sail for Algiers, where it captured two of the Dey's ships and forced him to stop the piracy, release all captives, and renounce the practice of annual tribute payments. Similar treaties were obtained from Tunis and Tripoli. By the end of 1815, Madison could report to Congress on the successful termination of the war with Algiers.

LEGISLATIVE CONTROLS ON PROSPECTIVE ACTIONS

Can Congress only authorize and declare war, or may it also establish limits on prospective presidential actions? The statutes authorizing President Washington to ''protect the inhabitants'' of the frontiers ''from hostile incursions of the Indians'' were interpreted by the Washington administration as authority for defensive, not offensive, actions. 1 Stat. 96, §5 (1789); 1 Stat. 121, §16 (1790); 1 Stat. 222 (1791). Secretary of War Henry Knox wrote to Governor Blount on October 9, 1792: ''The Congress which possess the powers of declaring War will assemble on the 5th of next Month—Until their judgments shall be made known it seems essential to confine all your operations to defensive measures.'' 4 The Territorial Papers of the United States 196 (Clarence Edwin Carter ed. 1936). President Washington consistently held to this policy. Writing in 1793, he said that any offensive operations against the Creek Nation must await congressional action: ''The Constitution vests the power of declaring war with Congress; therefore no offensive expedition of importance can be undertaken until after they have deliberated upon the subject, and authorized such a measure.'' 33 The Writings of George Washington 73.

The statute in 1792, upon which President Washington relied for his actions in the Whiskey Rebellion, conditioned the use of military force by the President upon an unusual judicial check. The legislation said that whenever the United States ''shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe,'' the President may call forth the state militias to repel such invasions and to suppress insurrections.'' 1 Stat. 264, §1 (1792). However, whenever federal laws were opposed and their execution obstructed in any state, ''by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act,'' the President would have to be first notified of that fact by an Associate Justice of the Supreme Court or by a federal district judge. Only after that notice could the President call forth the militia of the state to suppress the insurrection. Id., §2.

In the legislation authorizing the Quasi-War of 1798, Congress placed limits on what President Adams could and could not do. One statute authorized him to seize vessels sailing to French ports. He acted beyond the terms of this statute by issuing an order directing American ships to capture vessels sailing to or from French ports. A naval captain followed his order by seizing a Danish ship sailing from a French port. He was sued for damages and the case came to the Supreme Court. Chief Justice John Marshall ruled for a unanimous Court that President Adams had exceeded his statutory authority. Little v. Barreme, 6 U.S. (2 Cr.) 169 (1804).

The Neutrality Act of 1794 led to numerous cases before the federal courts. In one of the significant cases defining the power of Congress to restrict presidential war actions, a circuit court in 1806 reviewed the indictment of an individual who claimed that his military enterprise against Spain ''was begun, prepared, and set on foot with the knowledge and approbation of the executive department of the government.'' United States v. Smith, 27 Fed. Cas. 1192, 1229 (C.C.N.Y. 1806) (No. 16,342). The court repudiated his claim that a President could authorize military adventures that violated congressional policy. Executive officials were not at liberty to waive statutory provisions: ''if a private individual, even with the knowledge and approbation of this high and preeminent officer of our government [the President], should set on foot such a military expedition, how can be expect to be exonerated from the obligation of the law?'' The court said that the President ''cannot control the statute, nor dispense with its execution, and still less can he authorize a person to do what the law forbids. If he could, it would render the execution of the laws dependent on his will and pleasure; which is a doctrine that has not been set up, and will not meet with any supporters in our government. In this particular, the law is paramount.'' The President could not direct a citizen to conduct a war ''against a nation with whom the United States are at peace.'' Id. at 1230. The court asked: ''Does [the President] possess the power of making war? That power is exclusively vested in congress. . . . it is the exclusive province of Congress to change a state of peace in a state of war. Id.

REPORT ON RESOLUTION WAIVING REQUIREMENT OF CLAUSE 4(b) OF RULE XI WITH RESPECT TO SAME CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. MCINNIS, from the Committee on Rule, submitted a privilege report (Rept. No. 104–453) on the resolution (H. Res. 342) waiving a requirement of clause 4(b) of rule XI with respect to consideration of certain resolution reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

TRIBUTE TO THE LATE HON. BARBARA JORDAN

The SPEAKER pro tempore. Under the Speaker's announced policy of May 12, 1995, the gentlewoman from Texas [Ms. JACKSON-LEE] is recognized for 60 minutes as the designee of the minority leader.

Ms. JACKSON-LEE of Texas. Mr. Speaker, many fear the future, many are distrustful of their leaders, and believe that their voices are never heard. Many seek only to satisfy their private work wants and to satisfy their private interests. But this is the great danger America faces, that we will cease to be one Nation and become, instead, a collection of interest groups, city against suburb, region against region, individual against individual, each seeking to satisfy private wants.

Mr. Speaker, if that happens, who then will speak for America? Who then will speak for America? What are those of us who are elected public officials supposed to do? I will tell you this, we as public servants must set an example for the rest of the Nation. It is hypocritical for the public official to admonish and exhort the people to uphold the common good if we are derelict in upholding the common good. More is required of public officials than slogans and handshakes and press releases. More is required. We must hold ourselves strictly accountable. We must provide the people with a vision of the future.

Mr. Speaker, that was from Barbara Jordan, 1976, at the Democrat Convention.

Mr. Speaker, last week we lost an American hero. Barbara Jordan died last week on Wednesday, January 17, 1996, a friend to many, a mentor, and an icon. The late honorable Congresswoman, Barbara Jordan, who not only represented the 18th Congressional District of Texas that I am now privileged to serve, was one of the first two African-Americans from the South to be elected to this august body since reconstruction. She was a renaissance woman, eloquent, fearless, and peerless in her pursuit of justice and equality. She exhorted all of us to strive for excellence, stand fast for justice and fairness, and yield to no one in the matter of defending this Constitution and upholding the most sacred principles of a democratic government. To Barbara Jordan, the Constitution was a very profound document, one to be upheld.

The lady, Barbara Jordan, the first black woman elected to the Texas Senate, was born February 21, 1936, the daughter of Benjamin and Arlene Jordan. The youngest daughter of a Baptist minister, she lived with her two sisters in the Lyons Avenue area of Houston's Fifth Ward. The church played an important role in her life. She joined the Good Hope Baptist Church on August 15, 1953, under the leadership of Rev. A.A. Lucas, graduating with honors from Houston's Phyllis Wheatley High School in the Houston Independent School District.